

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BURBANK UNIFIED SCHOOL DISTRICT
AND FOOTHILL SELPA.

OAH CASE NO. 2012100337

ORDER GRANTING FOOTHILL
SELPA'S MOTION TO BE DISMISSED
AS A PARTY

On October 8, 2012, Student filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) naming Burbank Unified School District (District) and the Foothill Special Education Local Plan Area (Foothill SELPA) as the respondents.

On October 17, 2012, Foothill SELPA filed a motion to dismiss on the grounds that it is not a proper or necessary party to the action, and the complaint fails to state a claim against Foothill SELPA.

On October 19, 2012 Student filed an opposition to the motion. Foothill SELPA filed reply on October 22, 2012.

APPLICABLE LAW

Special education due process hearing procedures extends to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area [SELPA], . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.) Thus, although a SELPA may fit the definition of "public agency" set forth in the IDEA, to be a proper party for a due process hearing the SELPA must also be involved in making decisions regarding a particular student.

Determination of whether the SELPA is a "public agency involved in any decisions regarding" Student in this case requires a review of California statutes that define the role of SELPA's. Education Code sections 56195, 56195.1, and title 2, California Code of Regulations, section 60010, set forth the role of SELPA's. Specifically, a SELPA, meaning the service area covered by a special education local plan, shall administer the allocation of funds and local plans submitted under Education Code section 56205. Nothing in Education Code sections 56195 and 56195.1 renders a SELPA individually responsible to provide a free

appropriate public education (FAPE) to, or make education decisions about, a particular student. The duty to administer the allocation of funds and local plans is not a duty to provide FAPE to individual students or a duty to make educational decisions for individual students.

DISCUSSION

Student's complaint alleges that he has been a resident of, and has received special education services from, District since January 2006. His complaint states claims from 2006 through the present against District for denial of a free appropriate public education (FAPE) for: (1) failure to assess in all areas of suspected disability, (2) failure to offer and implement appropriate behavior supports, (3) failure to draft appropriate and measurable goals, (4) failure to place Student in the least restrictive environment, (5) predetermination of Student's placements, (6) failure to hold a six-month reevaluation IEP (May 2011 through November 2011), (7) failure to timely respond to an educational records request, (8) failure to give prior written notice of discontinuation of special education (from January 2006 through August 2009), and (9) implementation of a 504 plan (January 2006 through August 2009) rather than special education and related services. The only references to Foothill SELPA in Student's complaint are that "Student has been in Respondents District and [Foothill] SELPA since he was of school age," and that the statute of limitations should be tolled due to District's and "[Foothill] SELPA's withholding of information from the Parent" after a September 4, 2012 records request.

Foothill SELPA contends that it is not a proper or necessary party to this action, as it is not an educational agency with a duty to provide Student with a FAPE.¹ Foothill SELPA also argues that it is not identified in Student's complaint as the author or custodian of Student's educational records, and did not receive a records request. It submits the declaration of its director, Dr. Amy Lambert, which states that Foothill SELPA has not, at any time alleged, assumed responsibility to assess or provide services to Student, and has not received a records request from Student.

Student asserts in his opposition that Foothill SELPA drafted the special education forms used by District, and Foothill SELPA's name is at the top of those forms, and therefore "District seemingly operates under the supervision of [Foothill] SELPA." Student contends that Ed. Code section 56195.1, subd. (c), requires that [Foothill] SELPA "assure access to special education and services for all individuals with exceptional needs residing in the geographic area served by the plan."

Foothill SELPA replies with another declaration of director Lambert, stating that all school districts in Foothill SELPA use its forms, but that does not give Foothill SELPA

¹ Foothill SELPA's moving papers, filed by Atkinson, Andelson, Loya, Rudd & Romo as attorneys for Foothill SELPA, will be deemed a notice of representation, as no notice of representation of Foothill SELPA by that firm has been filed with OAH.

authority or responsibility for educational decisions for individual student, and no Foothill SELPA employee attended Student's IEPs or participated in educational decisions.

Student's complaint raises nine issues, but none of the issues allege or contain claims against Foothill SELPA, or specify how or when Foothill SELPA denied Student a FAPE. As set forth above, Education Code sections 56195 and 56195.1 do not impose a duty upon a SELPA to be individually responsible to provide a FAPE, or make education decisions about Student, let alone respond to records requests made to its member districts. Student's argument that Foothill SELPA's provision of blank forms to member school districts, including District, for use in special education matters somehow results in Foothill SELPA thereby supervising District and participating in District's educational decisions constitutes an unsupported and unreasonable extension of Foothill SELPA's statutory role.

In sum, the complaint fails to allege violations of the IDEA or corresponding state law against Foothill SELPA. Therefore the Foothill SELPA is dismissed as a party to the complaint.

IT IS SO ORDERED.

Dated: October 22, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings